

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 17, 2008

WILLIAM JOEL HAITHCOTE, II v. STATE OF TENNESSEE

Appeal from the Circuit Court for Bedford County
No. 11123 Steve Daniel, Judge

No. M2007-01579-CCA-R3-PC - Filed October 15, 2008

The petitioner, William Joel Haithcote, II, appeals from the Bedford County Circuit Court's denial of his petition for post-conviction relief, which he filed through counsel in 2007 to challenge his 2006 guilty-pleaded convictions of two counts of conspiracy to commit first degree murder. Following review, we affirm the order of the post-conviction court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

John H. Norton, III, Shelbyville, Tennessee, for the appellant, William Joel Haithcote, II.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Charles Frank Crawford, Jr., District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In its May 23, 2007 order dismissing the post-conviction petition, the circuit court determined that the "sole basis of the petition is a complaint by [the petitioner] that the trial court erred in failing to grant his motion to dismiss the original indictment based on grounds of the violation of his rights under the Interstate Compact on Detainers (the compact) and the failure to obtain a speedy trial." We agree that the petition addressed only these claims. The post-conviction court also found that, following arguments on the petitioner's 2005 motion to dismiss the indictments, "superseding indictments were issued to which [the petitioner] pled guilty on January 11, 2006." In addition, the court found that, during the plea submission hearing, the petitioner acknowledged that by pleading guilty he was waiving "any complaint that he might have about the trial court's decision dealing with [his] pretrial motions, dealing with the violation of his speedy trial rights, to which [the petitioner] answered under oath that he understood that to be the case." As a

result of these findings, the court held that the post-conviction petition was meritless and dismissed it. From that ruling, the petitioner filed a timely appeal.

In his brief on appeal, the petitioner asserts that “the record is insufficient to support [the post-conviction court’s] summary dismissal of [the petitioner’s] claim for relief as meritless” and that the post-conviction court “impermissibly” concluded that, through his plea submission, the petitioner waived “his right to post-conviction relief.” Furthermore, the petitioner claims that the denial of his pretrial motion to dismiss based upon non-compliance with the compact bespeaks a due process deprivation that is cognizable in a post-conviction proceeding. The State counters that the issues of non-compliance with the compact and a violation of the right to speedy trial were adjudicated by the trial court prior to the plea of guilty and have, therefore, been previously determined. It also posits that the petitioner’s voluntary guilty pleas waived the underlying issues. We agree with the State.

The post-conviction petitioner is obliged to establish his claims by clear and convincing evidence. *See* T.C.A. § 40-30-110(f) (2006). On appeal, the appellate court affords the trial court’s findings of fact the weight of a jury verdict, and these findings are conclusive on appeal unless the evidence preponderates against them. *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997); *Bates v. State*, 973 S.W.2d 615, 631 (Tenn. Crim. App. 1997).

Post-conviction relief is available only “when the conviction or sentence is void or voidable because of the abridgment of any [constitutional] right.” T.C.A. § 40-30-103 (2006). “If the facts alleged, taken as true, fail to show that the petitioner is entitled to relief or fail to show that the claims for relief have not been waived or previously determined, the petition shall be dismissed.” *Id.* § 40-30-106(f). Generally, “[a] ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented.” *Id.* § 40-30-106(g). “A ground for relief is previously determined if a court of competent jurisdiction has ruled on the merits after a full and fair hearing.” *Id.* § 40-30-106(h).

I. Waiver of future post-conviction claims

First, we address the petitioner’s claim that, in his plea submission hearing, he was asked to waive any future claim to post-conviction relief. We discern, however, that the trial court did not require the petitioner to engage in such a waiver and instead merely advised the petitioner that acceptance of his plea of guilty would result in the waiver of any further review, including review upon direct appeal, of the claims presented in his pretrial motions. The advice came during the plea colloquy just after the trial court had explained that, had the petitioner gone to trial and been convicted, he could have asked for a new trial or, failing that, could have appealed.

The trial court’s advice concerning the waiver of an appeal of pre-plea issues was proper. The Tennessee Supreme Court has consistently held that “the entry of an informed and counseled guilty plea constitutes an admission of all of the facts and elements necessary to sustain

a conviction and a waiver of any non-jurisdictional defects or constitutional irregularities.” *See State v. McKinney*, 74 S.W.3d 291, 306 (Tenn. 2002) (citing *State v. Carter*, 988 S.W.2d 145, 148 (Tenn. 1999); *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999)).

II. Summary dismissal of claims

The petitioner is also aggrieved that the post-conviction court summarily dismissed his petition. In its preliminary order, the post-conviction court stated that it was “incapable of making a preliminary determination of whether . . . the petition states a colorable claim without a review of the record of the entry of the guilty plea.” The court then ordered the preparation of a transcript of the plea submission hearing at State expense. The transcript was filed on May 23, 2007, and on the same day, the court entered its findings of fact, conclusions of law, and dismissal of the post-conviction petition.

In this case, it is true that the post-conviction court reviewed evidence or material outside the post-conviction petition to essentially determine that the guilty-pleading petitioner was not entitled to post-conviction review of the claims presented in the pretrial motions. Code section 40-30-106(a) provides, however, that the judge assigned to review the post-conviction petition “shall, within thirty (30) days of the filing of the original petition, or a petition amended in accordance with subsection (d), examine it *together with all the files, records, transcripts, and correspondence relating to the judgment under attack*, and enter an order in accordance with the provisions of this section or § 40-30-107.” T.C.A. § 40-30-106(a) (emphasis added). Given this statutory language, we determine that the issues raised by the petitioner related to those claims made in the pretrial motion to dismiss were disposable for post-conviction purposes through the review of the petition and record conducted by the post-conviction court.

First, as we pointed out above that, to be cognizable in a post-conviction context, a claim must be constitutionally based. “A prisoner’s rights under the Interstate Compact on Detainers are not constitutionally based.” *Donald Ray Turner v. State*, No. 03C01-9701-CR-0007, slip op. at 3 (Tenn. Crim. App., Knoxville, Sept. 10, 1998) (citing *State v. Suarez*, 681 S.W.2d 584, 586 (Tenn. Crim. App. 1984), *overruled on other grounds by State v. Moore*, 774 S.W.2d 590 (Tenn. 1989)). Despite the petitioner’s bid to have us view the issue as implicating due process principles on the ground that the compact offers “state-created liberty interests,” we hold that the claim that the petitioner suffered violations of the compact is not cognizable in a post-conviction proceeding. As such, this claim was subject to summary dismissal even without the court’s review of the plea-submission-hearing transcript.

Second, we turn to the post-conviction court’s determination that, via pleading guilty, the petitioner waived both claims that were presented in the pretrial motion. As pointed out above, the entry of an informed and counseled guilty plea constitutes a waiver of any non-jurisdictional defects or constitutional irregularities. *See McKinney*, 74 S.W.3d at 306. In the present case, the

petitioner makes no claim that his guilty pleas were uninformed, unknowing, or involuntary,¹ and the transcript of the plea-submission hearing shows that he was represented by counsel when he submitted the pleas and that he understood the waiver consequences of his entering the pleas, including that he was foregoing any further attempts to have the denial of his pretrial motions reviewed on appeal. We hold that, as in this situation, when the petitioner essentially does not assail the sanctity of his guilty pleas despite knowing that the plea waives appellate review of any non-jurisdictional pre-plea issues, those issues have been also waived for post-conviction purposes. *See* T.C.A. § 40-30-106(g) (“A ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented.”).

In addition, we agree with the State that the pretrial claims were previously determined by “a court of competent jurisdiction [that] ruled on the merits after a full and fair hearing.” *See id.* § 40-30-106(h). The petitioner admitted in his petition that the trial court heard and denied his pretrial motion to dismiss the indictments and that the adjudication was not appealed. Consequently, the adverse judicial determination of the issues raised still stands. *See Brown v. State*, 489 S.W.2d 268, 270 (Tenn. Crim. App. 1972) (“All trial questions are first determined in the trial court. If the losing party chooses to accept that determination without appeal, it is as final and binding as if affirmed by the highest appellate court.”). Thus, the previous-determination rule also justifies the post-conviction court’s denial of relief without a full evidentiary hearing.

III. Conclusion

We conclude that the order of the post-conviction court was proper, and we affirm.

JAMES CURWOOD WITT, JR., JUDGE

¹The petition does aver that the petitioner was “compelled” to plead guilty or else he would have been tried on a twelve-count indictment.